

STATE OF MICHIGAN
COURT OF APPEALS

JOHN S. GIRBACH and CAROL B. GIRBACH,

Plaintiffs-Appellants,

v

CITY OF SALINE and LEE BOURGOIN,

Defendants-Appellees.

UNPUBLISHED

January 30, 2001

No. 221561

Washtenaw Circuit Court

LC No. 98-009975-CZ

Before: Collins, P.J., and Doctoroff and White, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendants' motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The City of Saline brought a condemnation action against plaintiffs to acquire property in downtown Saline to construct a parking lot. The parties reached a settlement agreement under which plaintiffs received \$40,000 for the property. Plaintiffs were given a right of reverter in the event that the city should ever cease to use the land for public parking lot purposes.

Plaintiffs brought this action for declaratory judgment, fraud and misrepresentation, breach of contract, and violation of the Consumer Protection Act, asserting that the property was not being used for parking lot purposes. After an initial hearing, the trial court dismissed all but the breach of contract count. The trial court subsequently dismissed the remaining count, finding that there was no genuine issue of fact as to whether the property was being used for public parking lot purposes. The court found that plaintiffs' property is an integral part of the parking lot.

A trial court's grant of summary disposition is reviewed de novo on appeal. *Wayne Co v Plymouth Twp*, 240 Mich App 479; 612 NW2d 440 (2000). A motion under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Id.* A court must consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in a light most favorable to the nonmoving party in determining whether a genuine issue of material fact exists. *Id.*

The trial court was not barred by law of the case from reconsidering defendants' motion. The law of the case doctrine applies to actions held in subsequent proceedings in the same case. *People v Mitchell (On Remand)*, 231 Mich App 335, 340; 586 NW2d 119 (1998). Here, all actions took place during the same proceedings before the lower court. There was no finality of judgment in this context, and defendants could properly seek rehearing from the same court. *Muilenberg v The Upjohn Co*, 169 Mich App 636, 641; 426 NW2d 767 (1988). Successive summary disposition motions are allowed under MCR 2.116(E)(3), as long as they are not filed in bad faith and comply with the provisions of MCR 2.114. MCR 2.116(F).

Plaintiffs failed to show that there is a genuine issue of material fact regarding the use of their former property for public parking lot purposes. The property is being used for an entrance to the parking lot, a handicap drop off point, and a walkway to the lot.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Martin M. Doctoroff
/s/ Helene N. White